

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 09-0659V

Filed: November 13, 2012

Not to be published

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TERRY L. BAIRD, on behalf of  
the estate of Evelyn M. Baird and as  
surviving spouse of Evelyn M. Baird,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES

Respondent.

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Petitioner's Motion for a Decision  
Dismissing the Petition; Insufficient Proof  
of Causation; Vaccine Act Entitlement;  
Denial Without Hearing

## DECISION<sup>1</sup>

On October 2, 2009, petitioner filed a Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program ("the Program"),<sup>2</sup> alleging that Evelyn Baird was injured by a vaccine listed in the Vaccine Injury Table. *See* § 14. The information in the record, however, does not show entitlement to an award under the Program.

On November 6, 2012, petitioner filed a document seeking a decision dismissing his petition. Petitioner asserts in that document that under the current applicable law, petitioner will

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), a party has 14 days to identify and move to delete medical or other information, that satisfies the criteria in § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, I agree that the identified material fits within the requirements of that provision, I will delete such material from public access.

<sup>2</sup>The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 *et seq.* (hereinafter "Vaccine Act" or "the Act"). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

be unable to demonstrate entitlement to compensation in the Program. Accordingly, petitioner requests that the undersigned dismiss the above-captioned petition.

To receive compensation under the Program, petitioner must prove either 1) that Evelyn Baird suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or 2) that Evelyn Baird suffered an injury that was actually caused by a vaccine. See §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). An examination of the record did not uncover any evidence that Evelyn Baird suffered a “Table Injury.” Further, the record does not contain a medical expert’s opinion or any other persuasive evidence indicating that Evelyn Baird’s injury was vaccine-caused.

Under the Act, the petitioner may not be given a Program award based solely on the petitioner’s claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. § 300aa-13(a)(1). In this case, because the medical records are not sufficient to support petitioner’s claim, a medical opinion must be offered in support. Petitioner, however, has offered no such opinion.

Accordingly, it is clear from the record in this case that petitioner has failed to demonstrate either that Evelyn Baird suffered a “Table Injury” or that her injury was “actually caused” by a vaccination. **Thus, this case is dismissed for insufficient proof. In the absence of a timely-filed motion for review of this Decision, the Clerk shall enter judgment accordingly.**

**IT IS SO ORDERED.**

/s/ George L. Hastings, Jr.

George L. Hastings, Jr.  
Special Master